



# CANADIAN RAILROADS

*VERSUS*

Railroads of the United States.

---

WHAT SHALL WE DO ABOUT IT?

---

BY JOSEPH NIMMO, JR.

THE course of events now transpiring indicates the opening of a new chapter in the history of a branch of our diplomacy which bears the impress of the irony of fate. I refer to the international intercourse between the United States and the Dominion of Canada. The location of our northeastern boundary line, by an absurd blunder, deprived us of the islands of Campo Bello and Grand Manan; we were bullied out of "fifty-four, forty," on the Pacific Coast, which, if adhered to, would have given us an unbroken sea-coast line from Mexico to the Arctic Ocean; the location of our northwestern boundary line, which gave Vancouver's Island to Great Britain, was unfortunate; in the year 1855 we entered into a Reciprocity Treaty with Canada, which we were glad enough to get rid of at the earliest possible moment, for the reason that it opened to Canada the advantages of our extensive and valuable markets, and in return gave us the privilege of "carrying coal to Newcastle;" the fishery question has always been a torment to us, and the award decreed under the provisions of the 22d Article of the Treaty of Washington as compensation to the Canadians for the unimportant privileges of the in-shore fisheries was absurd beyond expression. The United States has all along maintained that the right of our fishermen to purchase bait and to trade in Canadian ports is a common and imprescribable commercial right under the "law of nations," and subject to suspension only as a war measure; but Canada defiantly lays an embargo upon bait and supplies of all sorts and declares that they are mere concomitants of the fishing business. And this absurd assumption, insulting to the common sense of the people of the United States, has been maintained so long that it has actually acquired a sort of pre-

scriptive force. It is, perhaps, fortunate for us that Canada has never pushed the claim asserted in 1783 that her fishery rights extend to the outer margin of the banks of Newfoundland.

In the relations of the two countries to each other touching the interests of transportation, we have also, first and last, given much and received little. The State of New York, in the year 1826, completed the Erie Canal, from Lake Erie to the Hudson, and thus placed our Northwest Territory in commercial communication with the Atlantic seaboard. At once Canada began the construction of a system of improvements, embracing the Welland and St. Lawrence canals, costing in the aggregate about fifty million dollars, for the sole purpose of competing for the same prize; and later on she has constructed a railroad system, which, like her canal system, draws its life-blood from American commerce. During the last fifty years the United States has contributed hundreds of millions of dollars toward sustaining the transportation lines and the commercial interests of Canada, and in return we have not drawn one-hundredth part as much from the domestic and foreign commerce of the Dominion. Even now, while denying to our fishermen the right to ship the products of their industry through her territory to their home markets, her railroads are carrying millions of dollars' worth of American goods between American ports.

The inferiority of Canada to the United States in point of resources seems to have been largely off-set by her superiority in the art of securing international advantages. Small wonder, is it, that the Dominion has an appetite for treaties

But the cap-sheaf of diplomatic misadventure was

laid when the privilege of participating in our domestic commerce was granted to the railroads of Canada by the Treaty of Washington, without even securing for our own railroads the much less valuable reciprocal privilege of freely participating in the domestic commerce of the Dominion of Canada. This suggests the subject of the present writing:

#### THE UNITED STATES AND CANADIAN TRANSIT TRADE.

The so-called "United States and Canadian Transit Trade" has an existence separate and apart from any of those considerations of policy touching trade, and industry, and customs revenues, which pertain to the interchange of products between the two countries. The "Reciprocity Treaty" of 1855 had no reference to it whatever. The Transit Trade had its origin in an emergency. It was inaugurated as an expedient for subserving the interests of citizens of the United States. It began about the 1st of April, 1855, upon the completion of the Railroad Suspension Bridge across the Niagara River, at a point two miles below "The Falls." The Great Western Railway of Canada, extending from that point to a point opposite the city of Detroit, in connection with the New York Central Railroad at the east and the Michigan Central Railroad at the west, then formed the only "all rail" route from the Atlantic seaboard to Chicago. Franklin Pierce was then President of the United States. The question arose as to whether foreign railroad cars could be allowed to do what foreign vessels on navigable waters had been prohibited from doing since the foundation of the Government, viz.: engage in transporting American merchandise from one point in

the United States to another point in the United States. Let it be remembered that this was a period of unexam-pled territorial expansion and adventure. Westward the course of empire was taking its way with impetuous tread. At the same time a craze for the extension of railroad facilities pervaded the entire country. No principle touching the relations of the common carrier to the public interests, nor policy rooted in law, was then allowed to present any obstacle to railroad progress. The idea of regulating a railroad, or of interposing any obstacle to the will of a railroad company in the matter of extending its lines, or of forming connections with the lines of other companies, had not been broached. If it had been, its author would have been regarded as a crank of the most offensive character. There was nothing in our statutory law which, in terms, prohibited the proposed traffic, so the authorities at Washington decided that American merchandise might be locked in a car by a customs officer of the United States at one end of this Canadian line and opened at the other by another customs officer, without requiring the payment of duties on such goods. A few years later the Grand Trunk Railroad of Canada secured the privilege of transporting merchandise between our Northwestern and New England States, and recently the "Canadian Pacific Railway" has succeeded in effecting an arrangement with our authorities at Washington, whereby it is enabled to compete for our transcontinental traffic.

And now let us turn to the legal, diplomatic and administrative development of the "Transit Trade." The Act of July 28, 1866, first gave to this trade the sanction of statutory enactment. It is as follows :

"Imported merchandise, in bond or duty paid, and

products or manufactures of the United States, may, with the consent of the proper authorities of the British Provinces or Republic of Mexico, be transported from one port in the United States to another port therein, over the territory of such provinces or republic, by such routes and under such regulations and conditions as the Secretary of the Treasury may prescribe, and the merchandise so transported shall, upon arrival in the United States from such provinces or republic, be treated in regard to the liability to, or exemption from, duty or tax as if the transportation had taken place entirely within the limits of the United States."

I think my memory is not at fault in saying that the Act of July 28, 1866, was passed with special reference to enabling the Grand Trunk Railway Company to acquire a more secure right to engage in the business of transporting merchandise between its then western termini, on the Detroit River, and the States of Maine, New Hampshire and Vermont. This traffic subserved the interests of a portion of the New England States, which otherwise had no adequate facilities for all-rail communication with the West. The Act of July 28, 1866, also legitimized the traffic across the interjecting peninsula of Ontario, which lies between the State of New York and the State of Michigan. It at, also, was a traffic affording such manifest advantages to the people and the railroads of the United States as to justify the National Government in allowing its continuance,

The Act of July 28, 1866, is objectionable in the enormous magnitude of the discretionary power which it confers upon the Secretary of the Treasury; but the mischief was played when the High Joint Commission as-

sembled at Washington in 1871. The absurd 30th Article provided for the transportation in part by British vessels and in part by Canadian railroads. It was not very important in the magnitude of the privileges granted, but it violated the sanctity of our cherished "coastwise trade." Happily, it was annulled by a Resolution of Congress, approved March 3, 1883, and the Proclamation of President Arthur of January 31, 1885.

All our present trouble regarding the "Transit Trade" comes from the 29th Article of the Treaty of Washington, in connection with the Act of July 28, 1866, which it supplements.

The most astounding feature of the Treaty of Washington is contained in the last clause of the second paragraph of Article 29. This grants to Canadian railroads the right to convey goods, wares and merchandise in transit without payment of duty from the United States through the said possessions to other places in the United States; and it constitutes a privilege greater in magnitude than all the rest of the treaty put together, and yet it stands without any intimation whatever of granting to the railroads of the United States the obvious reciprocal privilege of transporting goods from one part of the Dominion of Canada to another part of the Dominion. In a word, by this article we granted to Canada the right to dip her ladle into our big dish, without even exacting from her the right to dip our spoon into her little dish. If the American Commissioners had insisted that our railroad companies should have the privilege of extending their lines into Canada and of transporting goods from one part of the Dominion to another part of the Dominion, notably from Montreal,

through Vermont, New Hampshire and Maine, to Halifax, the British members of the Joint High Commission would in all probability have refused to agree to Article 29. But the Grand Trunk Railway alone enjoys at the present time a far more important privilege than this, by means of the lines which it owns and controls from Chicago to Portland, with extensive tributary lines in the New England States. And now the Canadian Pacific, which has been appropriately termed "The Dominion on Wheels," has pounced upon our transcontinental traffic "like a wolf on the fold." And Canada has no corresponding traffic to offer our railroads in return.

The deceivableness of the diplomatic art is strikingly illustrated in the construction of Section 29 of the Treaty of Washington. That article, upon its face, relates to the commerce of the United States and of Canada *with foreign countries*, i. e., countries "beyond the sea," but the right of Canadian railroads to participate *ad lib.* in our domestic commerce is secured by these seven words: "*to other places in the United States*," interjected into the last clause of the second paragraph. This is easily explained. By referring to the article it will be seen that the first paragraph states what is conceded by the United States to the Dominion of Canada, and that the second paragraph states what is conceded by the Dominion of Canada to the United States. The phraseology employed in the two paragraphs is the same, the names of the two countries being transposed; but the last clause of the second paragraph differs from the corresponding clause of the first paragraph by having inserted into it the seven words above mentioned, as they are italicized in the following quotation from the treaty:

“And under like rules, regulations and conditions, goods, wares or merchandise may be conveyed in transit, without payment of duties from the United States, through the said possessions *to other places in the United States*, or for export from ports in the said possessions.”

Much indignation has recently been expressed over the dead and buried Section 30, but there is more sheer devilment impacted in the seven words of Article 29, to which reference has just been made, than in Article 30, and all the fishery articles put together. Manifestly the important privilege of allowing the railroads of one country to participate in the domestic commerce of the other country should have been made the subject of a separate article.

Under this Article 29 the Canadian railroads are now enabled to engage in the domestic commerce of the United States with much less constraint of our custom laws and regulations than is imposed upon railroads of the United States in transporting dutiable merchandise from the seaboard to interior ports of entry.

The Secretary of the Treasury, presumably by direction of the President of the United States, has recently bonded a line formed by the Pacific Coast Steamship Company, an American line, and the Canadian Pacific Railway Company. This has brought down upon the Administration severe censure. Recently Mr. Richard S. Spofford, a thorough Democrat, has in the *Boston Advertiser* vehemently denounced the Administration for its action in this case, and similar charges are brought by a “life-long Democrat” in the *New York Tribune* of the 19th inst. The questions raised and somewhat warmly debated are: *First*, when Congress annulled

Section 30, which provided for the transportation of goods in British vessels "from one point or place within the territory of the United States upon the St. Lawrence River, the Great Lakes and the rivers connecting the same, to another port or place within the territory of the United States as aforesaid" without payment of duty, "provided that a portion of such transportation is made through the Dominion of Canada by land carriage and in bond," did it thereby express its disapprobation of all mixed land and water carriage in the transit trade, or did such disapprobation relate only to the the Lake and St. Lawrence River region, and to the case of the employment of British vessels? *Second*, did the annulling of Article 30 forbid such mixed carriage in transit where the route is formed in part by an American line of vessels and in part by a Canadian railway? A *third* question raised is, does the Act of July 28, 1866, which stands unrepealed, in providing for the transportation of merchandise from one point to another "over the territory of the Dominion of Canada by such routes——— as the Secretary may prescribe," contemplate a route partly on the high sea and partly over the territory of the Dominion?

It should be observed just here that the provisions of both Article 29 of the Treaty of Washington and of the Act of July 28, 1866, are permissive and enabling, and not mandatory upon the administrative branch of the Government, and therefore that the Secretary of the Treasury could have refused his consent to the bonding of the Canadian Pacific route with its American steamer connection to San Francisco and other American ports on the Pacific Coast.

In passing it may be observed that an authority such

as that conferred by the Act of July 28, 1866, upon the Secretary of the Treasury is exercised by that officer in a ministerial way, under the direction of the President, in view of the fact that as our executive offices are organized, the Secretary of the Treasury has nothing to do with the management of foreign affairs.

I shall not here enter upon the discussion of the question as to the limits of the power now conferred by law upon the Administration in the matter of bonding lines, in part water and in part rail. While conceding that the question is a debatable one, I hesitate not to say, with reference to the Pacific Coast Steamer and Canadian Pacific Railway line, that I think the equities of the case touching the interests of the transcontinental railroads of the United States, and considerations of public policy hereinafter mentioned, would have fully justified the Administration in refusing its consent to such an arrangement. I would not, however, attempt to degrade this important subject to the rank of a partisan issue. Besides, as the matter may possibly be considered by the body of negotiators now assembled at Washington, I feel constrained to extend to the Administration the courtesy expressed in the familiar maxim *sub judice lis est*. Soon, also, Congress will undoubtedly consider this whole subject of our relations to Canada, and this particular feature of the transit trade will probably be discussed in all its bearings.

The present time, however, appears opportune for the public discussion of this matter upon its merits, especially as the Canadian Pacific Railway Company has proceeded to exercise its accorded privilege in a somewhat autocratic manner. Its management appears to have gone into a fight for the lion's share of our trans-

continental traffic with an air which seems to say, "if I am thwarted in the exercise of my own sweet will in this raid upon your domestic commerce you will soon find British iron-clads thundering at your unprotected sea-ports." The Canadian Pacific appears to be particularly vengeful toward the Northern Pacific, its nearest American competitor.

The Canadian Pacific Railway is essentially an arm of the Dominion Government. Political considerations conceived it, and political objects have pushed it to completion. The political policy which controls the management of the road is exercised in such manner as to set at defiance the laws of nature, and the natural course of the development of commercial enterprise between the Dominion and the United States. The Canadian Government has granted to this railroad company direct subsidies in the form of gifts and loans of its credit, to twice the amount granted by the United States Government to all our "Pacific roads" combined. The debt thus contracted by the Dominion Government amounts to \$120,000,000. The Canadian Pacific has also received from the Canadian Government an enormous land grant and monopoly powers such as were never before accorded to any transportation line on the face of the globe. The main line of the road traverses more than five hundred miles of wilderness north of the great Lakes, and one thousand miles of an arid region west of the city of Winnipeg, the soil and climate of which region forbid the hope of a development which will pay operating expenses. And now the Canadian Government finds it necessary to recoup as much as possible of its losses from this unremunerative political enterprise by laying violent hands upon the transcontinental commerce of the United States.

The transcontinental railroads of the United States have certain equitable claims to the protection of the United States Government against the attack of this foreign competitor, which, in its interests and acknowledged policy, is the *alter ego* of a foreign government.

The first transcontinental railroads completed in this country were undertaken and carried to completion under governmental patronage, for political rather than commercial purposes. Both those objects have, however, been fully subserved. All the lines completed are constructed and equipped according to the most advanced methods of railroad enterprise. Recently the time of passenger trains has been shortened by about thirty hours. Thus two remote sections of the country have been brought into close commercial and social relationship, and a vast area which for ages had been the dwelling place of the savage and the range of the buffalo has been subdued to the uses of civilized man. The through traffic over these lines, at first supposed to be the principal source of revenue, is now divided among nine companies, forming five competing lines, and the competition between these lines, together with the competition of the route via Panama, and the ocean route around Cape Horn has greatly reduced the rates on through traffic. The result is that the several companies have been forced to the policy of constructing branch lines in order to keep themselves out of bankruptcy, and in order also to reach the widely scattered sources of development throughout a vast area, where agriculture is possible only by means of irrigation.

For the last ten years the Pacific Railroads which received financial aid from the Government have been subjected to tedious and expensive investigation without

reaching any practical plan of settlement, and such investigation begins to look like the stock in trade of political exploitation. To allow a foreign government, through one of its political agencies, at this time to swoop down upon these lines with the voraciousness of railroad bankruptcy and the fierceness of political necessity, would not only be cold neglect, but absolute hostility to American enterprise which has wrought beneficially and grandly for the development of our national resources.

A few days ago our transcontinental railroads were forced to a compromise with this free lance of foreign competition, upon the basis of differentials which alone have prevented a disastrous railroad war, during which serious discriminations as between local and through rates would have been unavoidable.

The great lesson which we as a nation have yet to learn is that our railroad system, while the acknowledged object of national pride, is a vitally important branch of the business interests of the country, vital to the prosperity of commerce and industry, vital to the distribution and circulation, and the well-being of labor, vital to the safe employment of quick capital, and vital to the general prosperity of the country. It is the obvious duty of the National Government to see to it that the natural course of the development of these interests is not disturbed by foreign interference.

That the Canadian railroads do by their unregulated condition present an obstacle to the natural adjustment of rates and to the avoidance of those discriminations which have been the cause of so much complaint in this country, is a fact clearly recognized by the Interstate Commerce Commission in declaring that American lines

are justified in charging more for a shorter than for a longer haul in order to meet Canadian competition, an expedient to which our railroad companies seldom have recourse, except under the stress of circumstances and conditions beyond their control.

The Interstate Commerce Law of the United States, in important particulars, regulates our railroads in the conduct of both domestic and foreign commerce. Manifestly, therefore, every Canadian railroad which participates in our domestic or foreign commerce in the course of the transit trade, ought at once, by Act of Congress, to be compelled to submit itself to all the requirements of our Interstate Commerce Law, as a condition to its continuance in the business. To bind our own railroads by law and then allow their throats to be cut at leisure by the Canadian railroads, would be almost as baneful as Canadian diplomacy.

The propriety of the above-mentioned restraint upon the Canadian railroads is evident from the fact that the Interstate Commerce Act now prescribes against the Canadian railroads for the comparatively small offence of neglecting to publish rates, the penalty of subjecting all goods transported "in transit" to the payments of customs duties.

While the Dominion of Canada is able to secure so much more from our policy of letting important international interests go at loose ends and from diplomacy, than she can possibly secure from a reciprocity which gives as much as it takes, she will undoubtedly prefer to maintain the *status quo* of her present political conditions to either commercial or political union with the United States, or to independent nationality, especially as her colonial condition imposes upon her no financial obligations to the mother country, while securing to her

the protection of England's Navy and other advantages of British influence.

The answer is made to arguments such as the foregoing, that the raiding of our transcontinental lines by a foreign railroad subserves the interests of the shippers of freight. Even upon this low plane of consideration it would be easy to show that such an argument is both unpolitic and unjust, for the reason that it is calculated to impair the ability of the subdivided lines to meet their indebtedness to the Government. It is also opposed to the national economy. If, however, there be no motive of patriotic sentiment, or interest, or duty, or international policy which should abridge such foreign competition in our domestic carrying trade, then let us be consistent, and decree that in the interest of cheap transportation at any cost of national honor or of national interest, the patriotism which has preserved our coastwise trade to vessels carrying the American flag shall be renounced, and that foreigners shall be permitted to supplant this last vestige of the American merchant marine, as they have already supplanted American shipping in the foreign trade, an occupation in which American and foreign vessels compete on equal terms.

The Transit Trade has never had that measure of consideration at the hands of Congress which its importance demands, but it is to be hoped that the action of the Administration in opening up the subject of our relations with Canada, may subserve the purpose of awakening a just appreciation of the subject, and of leading to a popular demand that the Congress of the United States shall see to it that the interests of American commerce on the land as on the sea shall receive no detriment.

HUNTINGTON, LONG ISLAND, N. Y., Nov. 25, 1887.

ges .

re-  
by  
ers  
ion  
oth  
ted  
eir  
l to  
ive  
na-  
pe-  
on-  
or-  
mal  
vise  
be  
to  
ant  
hip-  
ich  
ms.  
of  
or-  
a of  
our  
of  
of  
the  
can  
no